MOTION FILED

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IN THE

Supreme Court of the United States

October Term, 1971.

No. 70-113.

FORD MOTOR COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA
and
THE ELECTRIC AUTOLITE COMPANY,
Appellees.

On Appeal From the United States District Court for the Eastern District of Michigan.

MOTION OF ZENITH VINYL FABRICS CORPORATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF.

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Appellees.

MOTION OF ZENITH VINYL FABRICS CORPORATION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE.

ZENITH VINYL FABRICS CORPORATION hereby moves this Court for leave to file a brief amicus curiae in the above captioned matter and ascribes the following reasons in support thereof:

1. Zenith Vinyl Fabrics Corporation (hereinafter called Zenith), was a distributor of vinyl fabrics manufactured at the plant of the defendant, Ford Motor Company (hereinafter called Ford), prior to 1961 which was the year of the agreement between Ford and Electric Autolite Company (hereinafter called Electric).

2. After the Ford acquisition from Electric of the "Autolite" name and distribution facilities, Ford termi-

nated its agreement with Zenith and proceeded to distribute vinyl fabrics through its "Autolite" division under the "Autolite" name.

3. Zenith filed a Complaint against Ford and Electric alleging substantially the same facts as were set forth in the complaint filed by the United States of America, but in addition thereto alleged that as a direct result of the said acquisition Zenith lost the distribution of Ford's vinyl fabrics and suffered substantial damage thereby.

4. Your petitioner believes that the acquisition by Ford of the "Autolite" name and the distribution facilities of "Autolite" from the defendant Electric was the most important result of the illegal agreement between Ford and Electric, which agreement damaged not only the petitioner, but various other persons and companies involved in the distribution of Ford's products or products similar to that which Ford produced.

5. While the United States of America has done a vigorous and commendable job in prosecuting its case against Ford and Electric, the emphasis of the litigation has been primarily on the acquisition of the spark plug and battery product line and not on the acquisition of the distribution system which Ford acquired when it acquired the "Autolite" name.

6. The effect of the acquisition by Ford Motor Company of the Autolite name and Autolite's distribution facilities is an important aspect of this litigation and the one aspect that affects the many small persons and companies involved in the distribution of products of the type manufactured by Ford.

7. Without a complete understanding of how these small companies are affected by this agreement, this Court

will not have a complete picture of the anti-competitive effects of the agreement in the distribution of automotive products manufactured by Ford.

WHEREFORE, petitioner prays for leave to file a brief amicus curiae with this Court.

MELVIN LASHNER,
Counsel for Zenith Vinyl Fabrics Corporation.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971.

No. 1552.

FORD MOTOR COMPANY,

Appellant,

v.

UNITED STATES OF AMERICA AND
THE ELECTRIC AUTOLITE COMPANY

Appellees.

BRIEF OF ZENITH VINYL FABRICS CORPORATION.

QUESTIONS PRESENTED.

1. Was the acquisition by Ford Motor Company of the "Autolite" brand name and distribution facilities (among other assets) a violation of Section 7 of the Clayton Act where by said acquisition Ford acquired the "Autolite" brand name, and the "Autolite" distribution facilities which enabled Ford to compete with small, independent distributors of manufactured products produced in Ford's many manufacturing plants; and

2. Was the relief granted by the lower court extensive enough to prevent Ford from competing with independent distributors of Ford products which products Ford was able to distribute competitively only after the illegal acquisition of the "Autolite" distribution facilities.

STATEMENT OF FACTS.

The Petitioner, Zenith Vinyl Fabrics Corporation (hereinafter called Zenith), was a distributor of vinyl fabrics produced at the Ford Motor Company plant prior to the acquisition by Ford of the "Autolite" trade name and distribution facilities (among other assets) acquired from the Electric Autolite Company (hereinafter called Electric). After the acquisition which the court below ruled illegal, Ford terminated its agreement with Zenith and proceeded to distribute vinyl fabrics through its illegally acquired distribution facilities under the "Autolite" name.

Zenith filed a Complaint against Ford and Electric alleging substantially the same facts that were alleged in the Complaint filed by the United States government, but further claimed that as a result of the illegal acquisition of the "Autolite" trade name and distribution facilities, Zenith was forced to discontinue business and suffered substantial damages thereby.

The court below, in the case of *United States of America v. Ford Motor Company et al.*, held that the acquisition was illegal, required Ford to divest the "Autolite" trade name but did not require Ford to divest the distribution facilities it acquired and built up under the illegally acquired "Autolite" name. Ford has appealed the lower court's order to this court.

ARGUMENT.

A. The Court Was Correct in Holding the Acquisition by Ford of the "Autolite" Name and Distribution Facilities, Among Other Assets, in Violation of Section 7 of the Clayton Act.

Section 7 of the Clayton Act prohibits acquisitions whose effect may be substantially to lessen competition or

tend to create a monopoly. *Brown Shoe Co. v. United States*, 370 U. S. 294, 323 (1962).

The theory behind the Clayton Act is that in order to preserve competition in the marketplace a company with the resources and manufacturing capabilities of the size of a Ford should be required to build from within its own system any expansion rather than to be allowed to acquire a substantial business from another company in a related field that may increase its size and competitive power.

The purpose of the Act is to protect small companies who might be able to compete in the marketplace with a company the size of a Ford in distribution of product but could not compete with a Ford that acquired the "Autolite" name and distribution facilities.

Such is the case that is presented in the complaint filed by Zenith. Zenith alleges that it could sell Ford products better than Ford could sell them, but once Ford acquired the "Autolite" name and distribution facilities Zenith could no longer compete with Ford in the distribution of vinyl fabric.

Once Ford had acquired the capacity to distribute vinyl fabric, which it acquired with the "Autolite" name and distribution facilities, it was only a matter of time until the Zenith contract was cancelled. Ford was better able to distribute all of its manufactured products through its new outlets under its new name "Autolite."

The acquisition by Ford of the "Autolite" brand name and distribution facilities was clearly a violation of Section 7 of the Clayton Act considering the size of the Ford Motor Company and the competitive advantages obtained over smaller, independent distributors, with the acquisition of the "Autolite" distribution facilities and the "Autolite" name. The court below so held.

B. The Court Was Correct in Ordering Ford to Dispose of the "Autolite" Name. However, It Should Also Have Ordered Ford to Dispose of All of the Distribution Facilities Which Ford Acquired From "Autolite" or Which Ford Built Up Through the Use of the "Autolite" Brand Name.

Section 7 of the Clayton Act gives the court the right to order illegally acquired assets to be divested by the acquirer. Not only the asset itself may be ordered divested but all of the fruits of the acquisition may be ordered divested.

Upon the acquisition of the "Autolite" name and distribution facilities, Ford internally built up a distribution system for all of its manufactured products not necessary for use in its cars under the "Autolite" brand name. What was once the "Hardware and Accessories Division" of Ford Motor Company prior to the acquisition became the "Autolite Division" and Ford promoted its sales of all products including vinyl fabrics, under that division and with the "Autolite" name.

The court below ordered Ford to dispose of the "Autolite" name. The court below should have ordered Ford to dispose of all of its distribution facilities which Ford built up in a ten-year period through its illegal acquisition of the "Autolite" name.

Ford's present distribution of products is under its "Autolite" division which it built up with the "Autolite" name. This entire distribution system should be ordered divested by the Ford Motor Company. To allow it to keep this distribution system illegally acquired and illegally built up would allow Ford to keep the tainted fruit of an illegally acquired tree.

Zenith could again distribute vinyl products only if Ford was required to divest its distribution system which it built up under the "Autolite" name. The order of the lower court should be so modified.

CONCLUSION.

The thrust of the Ford Motor Company's argument is that it needed the acquisition of the "Autolite" trade name, the "Autolite" distribution system and other assets to compete with other large manufacturers. It ignores all small distributors that may have been hurt by the acquisition. The anti-trust acts were passed to foster competition at all levels of business. Ford's argument that the anti-trust laws were not passed to prevent large manufacturers from getting larger to compete with other large manufacturers does not pass the test set forth in Section 7 of the Clayton Act. The Court below so held.

It is respectfully submitted that the divestiture order of the court below was inadequate in that such order did not include the divestiture of the distribution system built up by Ford as a result of the illegal acquisition. It is respectfully submitted that Ford's primary purpose in the acquisition of the assets in question from Electric Autolite Company was to obtain the "Autolite" brand name and the "Autolite" distribution system. Any order that does not force divestiture of the illegally acquired distribution system allows Ford to retain the tastiest fruits of its illegal acquisition.

Respectfully submitted,

MELVIN LASHNER,
Counsel for Zenith Vinyl Fabrics Corporation.

SUPREME COURT, U. S.
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E. ROBERT SEAVER, CLERK

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN.

APPELLANT'S OBJECTION TO MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN.

APPELLANT'S OBJECTION TO MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE.

Appellant, Ford Motor Company ("Ford"), opposes the motion of Zenith Vinyl Fabrics Corporation ("Zenith") for leave to file a brief amicus curiae in this case for the following reasons:

(1) The consent of the parties has not been obtained. Appellant opposes this motion as improper and it has repeatedly informed counsel for Zenith that it would do so. Appellant withheld consent for the reasons stated in (2) and (3) below.

(2) Movant's papers seek to present matters that were not dealt with or considered by the District Court in this case and that are, therefore, not before this Court. The matters that movant seeks to bring before this Court are involved in other litigation presently pending in the United States District Court for the Eastern District of Michigan.

(3) We are informed that the termination of Ford's relationship with Zenith was in no way related to Ford's acquisition of certain assets of The Electric Autolite Company. Indeed, the product involved—unsupported vinyl, such as is used in shower curtains, swimming pool covers and baby pants—has nothing to do with the automotive industry.

Conclusion

Appellant respectfully requests that the motion for leave to file a brief amicus curiae be denied.

Respectfully submitted,

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